*** THE HON'BLE SRI JUSTICE B. PRAKASH RAO**
AND
***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ W.P.NO. 12259 OF 2006

-

% 09.08. 2006

The Govt. of A.P. rep., by its Secretary to Govt., Municipal Administration & Urban Development, Department Secretariat, Hyderabad and another.

….. Petitioners

Vs.

1. $ M. Venkateswara Rao Revenue Officer (U/S) Chittoor Municipality Chittoor
   District.

….Respondent.

! Counsel for the Petitioners: G.P. for services-I

^ Counsel for the Respondent: Sri C. Srinivasa Baba

< Gist:

>Head Note

? Citations:

[1] (1982) 2 SCC 463
2 (1997) 3 SCC 261
3 (1994) 3 SCC 357
4 (1998) 6 SCC 466
5 (1969) 3 SCC 769
6 1994 Supp (3) SCC 90
7 (2005) 1 SCC 201
8 AIR 1945 Privy Council 38
9 1986 Lab.I.C. 848
10 1998(5) SCALE 226
11 (1975) 2 SCC 702
12 1964(5) SCR 1030

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.12259 OF 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed by the Government, aggrieved by the order of the Tribunal, in O.A. No. 660 of 2006 dated 17.02.2006, whereby the O.A. was disposed of at the admission stage directing that the disciplinary proceedings be concluded within two months, failing which the respondent-applicant, who has been under suspension, was to be re-inducted into service.

Facts, in brief, are that the respondent, (applicant in the O.A), was working as the incharge Manager of Machilipatnam Municipality, when he was placed under suspension by the 1st petitioner herein, vide G.O.Rt.No. 502, M.A. & UD(E2) dated 07.04.2005, pending initiation of disciplinary proceedings against him. Charges were subsequently framed and served on the respondent-applicant vide G.O.Rt. No. 1329 M.A.(E2) Department dated 22.09.2005. His grievance before the Tribunal was that, though he was placed under suspension on 07.04.2005 and a charge sheet had been issued vide G.O.Rt.No. 1329 dated 22.09.2005, the petitioners herein had not proceeded with the

enquiry. In his application, before the Tribunal, the respondent herein stated that he was due to retire from service on attaining the age of superannuation on 31.08.2006, that certain irregularities committed by the Shroff, in collusion with the Assistant Shroff and the Attender, in the Machilipatnam Municipality, had come to light and it was found that the money collected from the Municipal office, which ought to have been deposited in the bank through the Treasury, was fraudulently misappropriated by forging signatures and manufacturing fake stamps, by the said three employees, during the period October 2002 to October 2004. Criminal proceedings are said to have been instituted against these three employees. The respondent-applicant who, during the said period, was working as an Accountant and was posted as the Incharge Manager, as a stop gap arrangement for a brief period of three months, was kept under suspension attributing slack supervision on his part. Though the Commissioner of the Municipality was also suspended on similar allegations of supervisory lapses, the Government, vide G.O.Rt. No. 1424 dated 18.10.2005, had reinstated him into service, on sympathetic grounds, under the garb of implementing the recommendations of the District Collector. The respondent-applicant contended that, he stood on a much better footing than the Commissioner, he was entitled for parity in treatment, to be reinstated in service and that failure to do so amounted to hostile discrimination. The respondent-applicant stated that, in reply to the charge memo dated 22.09.2005, he had submitted his explanation on 12.11.2005 and though a similar charge memo, on the same allegations, was given to the Commissioner, the respondent-applicant alone was made a scapegoat for no fault of his, more so when it was not in dispute

that he had nothing to do with the fraud committed by the Shroff. Reference was also made, by the respondent, to the earlier O.A. No. 8610 of 2005 filed by him which was disposed of by the Tribunal directing the petitioner herein to review his suspension within a period of three months. He also stated that, though more than eleven months had elapsed, except issuing a charge memo, there was no progress in the enquiry, that he was languishing under suspension for the past nine months, he had been unnecessarily victimized, and that the power of suspension was exercised irrationally and without objectivity.

Though no counter-affidavit was filed before the Tribunal, in the draft affidavit filed by the petitioners herein, along with their writ petition, it is stated that the case on hand relates to misappropriation of Municipal funds of Rs. 1.06 crores and excess withdrawal of funds to a tune of Rs. 38.64 lakhs in the Machilipatnam Municipality by the Municipal staff with the connivance of officials of the Treasury department. The Government having examined the case, and keeping in view its gravity, had suspended 12 Municipal employees including the respondent-applicant, whereas the Commissioner of the Municipality had suspended three others. It is stated that a charge sheet was issued against all the officers responsible and their explanation called for, that the Government, keeping in view the gravity of the case and the number of persons involved, had entrusted investigation to the C.B-C.I.D, vide memo dated 12.06.2006, and that it proposed to initiate disciplinary action simultaneously under the A.P.C.S (CCA) Rules, 1991 and appoint an enquiry officer to enquire into the charges framed against them. Reliance is placed on G.O.Ms. No. 86, G.A (Ser.C) Dept.

dated 08.03.1994, whereunder an order of suspension was required `to be reviewed after completion of six months. Among the conditions laid down in the said G.O. is that the outer time limit for keeping an employee under suspension is two years. However, in exceptional cases, considering the gravity of the charges, an employee could be continued under suspension even beyond the period of two years, especially in cases where deliberate delay in completion of the enquiry is caused due to non co-operation of the employee concerned. It is stated that a government servant, who is under suspension, can retire from service on attaining the age of superannuation as per the rules in force. Petitioners would submit that the government had examined the respondent-applicant's request for revocation of his suspension and had decided to continue the respondent-applicant under suspension as he was involved in a case of huge misappropriation of Municipal/government funds and that the respondent was informed accordingly vide memo dated 27.02.2006. It is contended that the Tribunal, without giving sufficient time and without considering the gravity of the offence, had disposed of the O.A, that since fifteen Municipal employees were involved, conducting a separate enquiry against the respondent-applicant alone would not be in accordance with law and that the time granted of two months to complete the disciplinary proceedings was wholly insufficient in as much as an enquiry officer had to be appointed, enquiry conducted, the enquiry report examined and final orders passed in accordance with the A.P.C.S.(CCA) Rules, 1991.

As noted above, the Tribunal disposed of the O.A, at the stage of admission, recording that both the Counsel for the

applicant and the learned Government Pleader had requested for disposal of the main O.A. itself. The Tribunal relied on Government memo No. 35676/Ser.C/98-1, G.A (Ser.C) Dept, dated 01.07.1998, and U.O. Note No. 19952/Ser.C/2000, GAD dated 27.04.2000, whereunder specific directions had been issued to conclude enquiries against government employees within a period of six months in complicated cases and three months in simple cases. Relying on the said memo/ U.O. note, the Tribunal disposed of the O.A. holding that it would be sufficient to direct the respondents to conclude disciplinary proceedings against the applicant within a period of two months from the date of receipt of a copy of the order and if, for any reason, disciplinary proceedings were not concluded within the stipulated time, as stated in the order, the respondents in the O.A, (petitioners herein), should re-induct the applicant into service without prejudice to the pendency of disciplinary proceedings, as the applicant was due to retire by the end of June, 2006.

As noted earlier, no counter affidavit was filed before the Tribunal by the petitioners herein. On being asked as to how the Government Pleader had consented to the disposal of the main O.A. itself at the stage of admission, without a counter-affidavit being filed in such serious matters relating to suspension of an employee in a case involving misappropriation of government funds exceeding Rs.1.06 crores, the affidavit of the Assistant Government Pleader, who appeared before the Tribunal in the said O.A, is placed before us. It is but appropriate that the contents of the said affidavit be extracted:

"I am the Assistant Government Pleader attached to Government Pleader for Home and Municipal Administration, A.P.A.T., Hyderabad and as such I am well acquainted with the facts of the case and deposing to this

Affidavit.

It is submitted that one Mr. M. Venkateshwara Rao, working as Revenue Officer, Chittoor Municipality, Chittoor District filed O.A.No.660 of 2006 for declaring the action of the Commissioner and Director of Municipal Administration and Government of Andhra Pradesh, Hyderabad in keeping him under suspension by impugned G.R.Rt. No. 502 dated 07.04.2005 of M.A. & U.D. (E2) Department for along time as illegal, arbitrary and amounts to perpetual suspension apart from violation of Articles 14, 16 and21 of the Constitution of India. When the case came up for admission on 03.02.2006 the Government Pleader instructed me to attend the case. **I have attended the case on 03.02.2006 and opposed grant of interim order. The Hon'ble Tribunal adjourned the matter for two weeks for instructions.**

I submit that, the case was again listed on 17.02.2006. I have attended the case and vehemently opposed grant of any orders and requested time for filing counter affidavit as instructions were not received by then in spite of reminders to the concerned officers. The Hon'ble Court did not grant time for filing counter and disposed the matter. Instead of nothing the Government Pleader requested for filing counter, the Learned Tribunal stated that since request of the Applicant is only for disposal of the Disciplinary case, no harm would be caused if such a direction is given fixing a time schedule for conclusion of Disciplinary Proceedings and endorsed in the order, as Government Pleader requested for disposal of the main O.A. itself. I have never requested the Hon'ble Tribunal to dispose of the main O.A. only came to know about this order after going through the order copy only."

It is a matter of concern that such serious allegations are made against a Member of the Administrative Tribunal by a Law Officer of the State. We do not, however, propose to examine the allegations in the affidavit, of the Assistant Government Pleader, as filed before us, since statements of judges, recorded in their judgment, as to what transpired in Court ought not to be permitted to be contradicted by affidavit or other evidence. If the petitioners herein, or their counsel, were of the view that the happenings in Court had been wrongly recorded in the judgment it was incumbent for them to bring these facts to the notice of the Member concerned and to have the record of judicial proceedings corrected.

In **State of Maharashtra v. Ramdas Shrinivas Nayak**[1],

the Supreme Court observed:-

"……. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges, who have made the record, to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice but, he may not call in question the very fact of making the concession as recorded in the judgment…….

…… So the Judges' record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else……"

There is, however, another aspect of the matter on which we consider it necessary to pen a few words of caution. Tribunals, created under the Administrative Tribunals Act, adjudicate matters which they are specifically empowered to under the Act. While Tribunals are not entitled to exercise the power of judicial review of legislative action to the exclusion of the High Courts, they perform a supplemental — as opposed to a substitutional — role in this respect. (**L. Chandra Kumar v. Union of India**[2]). In **Union of India v. Upendra Singh**[3], the Supreme Court observed:-

"….. It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal……."

At the stage of Admission, the Tribunal is required to consider whether the averments in the application entitle the applicant to seek the relief prayed for and whether such a relief can be granted. If the Tribunal is of the opinion that a prima facie case is made out for granting the relief sought for in the O.A, notice is issued calling upon the person or persons against whom the relief is sought to show cause why such relief should not be granted. If, however, the Tribunal finds that no such prima facie case is made out, the O.A. is to be dismissed without issuing notice to the person or persons against whom the relief is sought. The object is to ensure that an O.A. which is frivolous in nature or in which no relief can be granted by the Tribunal is dismissed at the threshold. (**Union of India v. S.P. Anand**[4]; **Gunwant Kaur v. Municipal Committee, Bhatinda**[5])).

While a frivolous Application would justify its dismissal at the stage of admission, caution must be exercised while granting relief to the Applicant, at the admission stage, without notice being issued to the respondents. More often than not a request for disposal of the O.A. at the admission stage is acceded to by Courts/Tribunals, without notice being issued to the respondents, on the premise that the relief sought for is innocuous, when a detailed examination of the matter would belie such an assumption. The present case, if the contents of the affidavit filed by the petitioners before us were to be accepted as true, is one

such. In **State of M.P. v. Makers Development Service (P) Ltd.,**[6], the Supreme Court remanded the matter back to the High Court, in view of the wholly unsatisfactory manner in which the writ petition had been disposed of as the Division Bench of the High Court had disposed of the writ petition before it, even before issuing notice to and calling upon the State Government to file its counter-affidavit.

Judicial discipline is an inbuilt mechanism inherent in the system itself. The Judiciary is the repository of public faith. It is the trustee of the people. The position that Judges occupy and the power they wield requires exercise of self-discipline of a high order. (**Tarak Singh v. Jyoti Basu**[7]). It is a matter of public policy that justice should not merely be done but should appear to be done. (**Vassiliades Vs. Vassiliades**[8]). While disposal of an O.A. at the admission stage, when both parties make such a request or give their consent thereto, are matters of discretion of the Tribunal, it needs to be remembered that emphasis on speedy disposal of cases, cannot and should not result in injustice.

Exercise of jurisdiction, by Tribunals constituted under the Administrative Tribunals Act, being discretionary, the discretion must be exercised on sound judicial principles, and not as a matter of course. (**Gunwant Kaur**[7]). One of the principles inherent is that, if quashing of an order results in great harm to the society, the Tribunal would, normally, exercise restraint for such discretionary power need not be exercised in every case where there is an error of law. In the name of correcting errors of law a situation which would result in injustice should not be brought

about. The discretionary jurisdiction would not be exercised unless substantial injustice has ensued or is likely to ensue. The Administrative Tribunal would not allow itself to be turned into a court of appeal, against orders passed in disciplinary proceedings, to set right mere errors of law which do not occasion injustice. Exercise of discretionary jurisdiction would be necessitated, mainly, where manifest injustice is caused or is likely to be caused or a substantial question of public importance is involved.

We do not wish to say more.

The Applicant, who approaches the Tribunal, must fully aver, and establish his rights flowing from the bundle of facts, thereby requiring the respondent to indicate its stand either by denial or by positive assertions. While a point, though not specifically raised in the application filed in the O.A, may be allowed to be raised subsequently at the hearing, when it is a pure question of law, (**Syed Bin Ali Vs. Superintending Engineer, A.P.S.E.B.**[9]), in the absence of necessary averment in the Application it is not permissible for the Tribunal to arrive at a conclusion on a factual position merely on the basis of submissions made in course of hearing. (**Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor**[10]).

The consent given for disposal of the main O.A. at the admission stage, could only have been on the facts as pleaded in the O.A. (application filed by the respondent-applicant). The application, in O.A.No. 660 of 2006, makes no reference to the Govt.memo dated 01.07.1998, and the U.O. note dated 27.04.2000, on which reliance was placed by the Tribunal in

directing that the disciplinary proceedings, against the respondent-applicant, be completed within a period of two months from the date of receipt of the copy of the order. Unlike statutory rules or rules made under the proviso to Article 309 of the Constitution of India, the Govt.Memo/U.O. note, are in the nature of administrative/Executive instructions. A finding that the said circular memo/U.O. note was applicable to the case on hand could only have been recorded after the respondents in the O.A, (petitioners herein), had been put on notice. The Tribunal erred in placing reliance on these proceedings, and in granting relief to the respondent-applicant, at the stage of admission, without notice being issued to the respondents in the O.A, (the petitioners herein).

It is contended on behalf of the respondent-applicant that the matter could be disposed of by this Court itself and thereby further delay, which would be caused if the matter were be remanded to the Tribunal, could be avoided. A writ of Certiorari looks beyond the personal rights of the person aggrieved. It is designed to keep the machinery of justice in proper working order by preventing Tribunals and public authorities from abusing their powers. (**Bar Council of Maharashtra v. M.V. Dabholkar**[11]). If an error of law apparent on the face of the record is disclosed and a writ of certiorari is issued, the usual course to adopt is to correct the error and send the case back to the Tribunal for its decision in accordance with law. It would be inappropriate for the High Court, exercising its certiorari jurisdiction, to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted

Tribunals. (**T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras**[12]).

The order in O.A. No. 660 of 2006 dated 17.02.2006 is quashed and the O.A. is remanded to the Tribunal for its consideration afresh on merits, in accordance with law, after giving reasonable opportunity to the petitioners herein, (the respondents in the O.A), to file their counter-affidavit.

The writ petition is allowed. However, in the circumstances, without costs.

_____

B.PRAKASH RAO, J

Date: -08-2006

_____

RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.
B/o
MRKR

[1] (1982) 2 SCC 463

[2] (1997) 3 SCC 261

[3] (1994) 3 SCC 357

[4] (1998) 6 SCC 466

[5] (1969) 3 SCC 769

[6] 1994 Supp (3) SCC 90

[7] (2005) 1 SCC 201

[8] AIR 1945 Privy Council 38

[9] 1986 Lab.I.C. 848

[10] 1998(5) SCALE 226

[11] (1975) 2 SCC 702

[12] 1964(5) SCR 1030